

DATE

Colby Cook  
Louisiana Public Service Commission  
P.O. Box 91154  
Baton Rouge, LA 70821-9154

**Re: Docket No. 2022-243  
Disqualification Plan**

Dear Mr. Cook:

The Louisiana Board of Ethics, at its May 6, 2022 meeting, considered your request, on behalf of the Louisiana Public Service Commission ("LPSC") to approve a plan allowing LPSC to hire Melissa Frey, the sister in law of LPSC employee Brandon Frey, as an Administrative Law Judge within LPSC's Administrative Law Division.

### **FACTS PROVIDED**

Melissa Watson Frey has been employed by LPSC since 2003. In March 2018, she married the brother of Brandon Frey, who is the Executive Secretary of LPSC. Ms. Frey served as the Deputy General Counsel for LPSC. In Docket No. 2018-027, the Board determined Ms. Frey's continued employment was not prohibited after her marriage to Mr. Frey and the Board approved a disqualification plan. You stated that the LPSC now desires to designate Ms. Frey as an Administrative Law Judge within the Administrative Law Division of LPSC.

Mr. Frey still serves as the Executive Secretary of LPSC, in which role he oversees all employees of LPSC.

LPSC has submitted a disqualification plan to avoid any potential violation of La. R.S. 42:1112, whereby Mr. Frey would recuse himself from participating in any transaction or duties involving Mrs. Frey. Any such decisions would be handled by Mrs. Frey's supervisor, Melanie Verzwylt, Chief Judge.

### **LAW**

**La. R.S. 42:1112B(1)** states that no public servant shall participate in a transaction involving the governmental entity in which, to his actual knowledge, any member of his immediate family has a substantial economic interest.

**La. R.S. 42:1112C** allows a disqualification plan to be developed in accordance with rules adopted by the Board to remove a public servant from participating in transactions that would otherwise present violations of Section 1112 of the Code.

**La. R.S. 42:1102(2)(a)(i)** defines “agency” to mean a department, office, division, agency, commission, board, committee, or other organizational unit of a governmental entity. “Agency of the public servant” and “his agency” when used in reference to the agency of a public servant shall mean for public servants in the twenty principal departments of the executive branch of state government, the office in which such public servant carries out his primary responsibilities; ...except that in the case of public servants who are members or employees of a board or commission or who provide staff assistance to a board or commission, it shall mean the board or commission.

**La. R.S. 42:1102(3)** defines “agency head” to mean the chief executive or administrative officer of an agency or any member of a board or commission who exercises supervision over the agency.

**La. R.S. 42:1102(13)** defines “immediate family” as the term relates to a public servant to mean his children, the spouses of his children, his brothers and their spouses, his sisters and their spouses, his parents, his spouse, and the parents of his spouse.

**La. R.S. 42:1102(15)** defines “participate” to mean to take part in or to have responsibility for action of a governmental entity or proceeding, personally, as a public servant of the governmental entity, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or the failure to act or perform a duty.

**La. R.S. 42:1102(18)(a)** defines “public employee” to mean any person, whether compensated or not who is: (i) an administrative officer or official of a governmental entity who is not filling an elective office; (ii) appointed by any elected official when acting in an official capacity, and the appointment is to a post or position wherein the appointee is to serve the governmental entity or an agency thereof, either as a member of an agency, or as an employee thereof; (iii) engaged in the performance of a governmental function; (iv) under the supervision or authority of an elected official or another employee of the governmental entity.

**La. R.S. 42:1102(19)** defines “public servant” to mean a public employee or elected official.

**La. R.S. 42:1102(21)** defines “substantial economic interest” as an economic interest which is of greater benefit to the public servant or other person than to a general class or group of persons, except: (a) the interest that the public servant has in his position, office, rank, salary, per diem, or other matter arising solely from his public employment or office; (b) the that an elected official who is elected to a house, body, or authority has in a position or office of such house, body, or authority which is required to be filled by a member of such house, body, or authority by law, legislative rule, or home rule charter, (c) the interest that a person has as a member of the general public.

## ANALYSIS

As employees of DOTD, Mr. Frey and Mrs. Frey are both public employees pursuant to La. R.S. 42:1102(18)(a), and are also accordingly public servants pursuant to La. R.S. 42:1102(19). As the Executive Secretary of LPSC, Mr. Frey would be considered an agency head over LPSC. As the sister-in-law of Mr. Frey, Mrs. Frey would be Mr. Frey’s immediate family member.

La. R.S. 42:1112B(1) would prohibit Mr. Frey from participating in duties relating to Mrs. Frey.

### **CONCLUSION**

Based on the facts presented, the Board concluded, and instructed me to inform you, that it approved the plan as proposed as it complies with the criteria set forth in Chapter 14 of the Rules for the Board of Ethics.

Changes to the facts as presented may result in a different application of the provisions of the Louisiana Code of Governmental Ethics. The Board issues no opinion as to past conduct or as to laws other than the Louisiana Code of Governmental Ethics, the Campaign Finance Disclosure Act, the Lobbyist Disclosure Acts, and the conflict of interest provisions contained in the Louisiana Gaming Control Law. If you have any questions, please contact me at (800) 842-6630 or (225) 219-5600.

Sincerely,

**LOUISIANA BOARD OF ETHICS**

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Charles E. Reeves, Jr.  
For the Board

**DISCLAIMER**  
This is a draft opinion and it is **NOT** an opinion of the Louisiana Board of Ethics. No party may rely on the facts or conclusions. The analysis and conclusions herein are provided for discussion purposes only, and are subject to change or revision at the meeting of the Board of Ethics at which this matter is considered.